IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-12-2006

CORAM

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

WRIT PETITION No.16723 OF 1998

Col.A.G.Thomas ... Petitioner

-vs-

1.Union of India,
rep.by its Secretary to Government,
Department of Defence (R&D),
New Delhi.

2.The Director General - Research & Development,
Ministry of Defence,
New Delhi.

3.The Director of Personnel,
R&D Organisation,
Ministry of Defence,
New Delhi.

4.The Estate Manager,
Estate Management Establishment,
Secunderabad. ... Respondents

Petition under Article 226 of the Constitution of India, prayin for issuance of a writ of certiorarified mandamus calling for th records relating to order No. 17713/RD/Pers-4-PS 176 dated 5/8/97 c the Respondents 1,2 and 3 and quash the same and direct the Respondent to permit the Petitioner to serve DRDO till the normal retirement ag of 57 years and also grant the benefit of the two years enhancement i the retirement age in accordance with the Cabinet decision conveye vide DOPT, OM No. 25012/2/97.Estt.(A) dt. 13/5/98.

For petitioner : Mr.Prakash Goklaney
For respondents : Mr.C.Krishnan, SCGSC

O R D E R

1.00. Whether a meritorious employee can be forced to prematur retirement without valid reason is the core question in this writ.

2.00. The order of compulsory retirement was served on IC-3242

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Col. AG Thomas, EME, an officer of DRDO, the petitioner herein. He i challenging the legality and correctness of the order.

3.00. The Union of India, represented by its Secretary t Government, Department of Defence, is the first respondent; th Director General-Research & Development, Ministry of Defence, is th second respondent; the Director of Personnel, R&D Organisation Ministry of Defence, is the third respondent and the Estate Manager Estate Management Establishment, Secunderabad, is the fourt respondent.

4.00. Through the impugned order dated 05th August, 1997, th petitioner was ordered to be relieved with effect from 31.10.1998 o attaining the age of 52 years. Admittedly, the petitioner has no attained the age of superannuation and there are no vigilance cases o disciplinary action either pending or initiated against the petitione during his entire service. If so, how far the order of compulsor retirement is legal ?

5.00. At the outset, this Court is clarifying that a judicia scrutiny of an order of imposing premature compulsory retirement i permissible if the order is either arbitrary or malafide or if it i based on no evidence.

In M.S.Bindra v. Union of India & Ors. (1998 (7) SUPREME 90), i para 21, the Supreme Court observed as follows :

> "21.We have no doubt that there is utter dearth of evidence for the Screening Committee to conclude that appellant had doubtful integrity. Such a conclusion does not stand judicial scrutiny even within the limited permissible scope. We, therefore, allow this appeal and set aside the order under attack including the order by which premature compulsory retirement was imposed on the appellant. The department concerned shall now work out the reliefs to be granted to the appellant as sequel to this judgment."

6.00. Thus, it is time to scrutinise the impugned order and th documents in support of it, in order to decide whether the order i legal or illegal.

7.00. Before I embark upon deciding the above question as t whether the impugned order is illegal, arbitrary, unconstitutional an against the principles of natural justice, I may have to know som other relevant facts, which require the attention of this Court for th purpose of answering the question raised before me.

8.00. FACTS :

8.01. The petitioner is a Mechanical Engineer from the Universit

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of Mysore, specialised in Armament Engineering, having done the Advanc Armament Engineering Course from EME School, Baroda.

8.02. The record of service, as furnished by the petitioner disclosed that he worked at P & EE, Balasore, during February,1974, t July,1976. He also worked as a Staff Officer to SA to RM, New Delhi from September 1979 to October 1984 and Deputy Technical Advise (Defence), High Commission of India, London, from October 1984 t December 1987 and served in CVRDE, Avadi, from January 1988 to Marc 1991 and thereafter as a Registrar (Academics), IAT, Pune, from Marc 1991 to August 1994 and finally in DRDO Liaison Cell & Estat Management Establishment, Madras, from August 1994 till the date of hi compulsory retirement.

8.03. The petitioner has highlighted his qualifications an eligibility criterion for continuing in the service and strongl contended that there are no adverse remarks in any of his Annua Confidential Reports.

8.04. The respondents did not deny the above either in thei counter or during the course of arguments. The reason is that th impugned order at para 4 states as follows :

> "It is confirmed that no disciplinary/vigilance case is pending/contemplated against the officer."

8.05. The further case of the petitioner is that he has complete all tasks assigned to him in time to the utmost satisfaction of hi superiors and all his superiors have appreciated his unblemishe character and untiring efforts.

8.06. The petitioner has specifically stated in his letter date 09th March, 1998, addressed to SA to RM and DG (R&D), that his dossier and Annual Confidential Reports written by Air Vice Marshal Deshpand and Rear Admiral Ajay Sharma, two senior officers of Air Force an Naval respectively, reveal that the petitioner is a competent person.

8.07. The petitioner was compulsorily retired while in service i DRDO. The petitioner held three coveted appointments during his caree in DRDO and the said three posts are normally held by outstandin officers only. They are // (1) Head of General Staff Branch at IAT Pune, (1991-1994), which is a category 'A' training establishmen under the control of Defence Ministry, training at least 100 Arm Officers for the safety and sovereignty of the country and during thi period, he earned very good respect and reverence from all concerne and the five confidential reports will speak for the kind of the wor both quantitatively and qualitatively, performed by the petitioner / (2) Deputy Technical Adviser (Defence) at HCI, London. It is state that he was accredited to most European countries and USA and th excellent confidential reports from the superiors disclose that he wa an asset to his team. The then High Commissioner of Indi Dr.P.C.Alexander has also appreciated the sincere work of th

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petitioner // (3) Staff Officer to SA to RM. According to th petitioner, he was selected to work as the Service Staff Officer (newly created post) to Dr.Raja Ramanna, who is a very famous an popular scientist of the country. The petitioner contends that th confidential reports written by Dr.Raja Ramanna discloses the conduct character and the credibility of the petitioner. It is also stated tha the petitioner continued to be the Staff Officer to Dr.V.S.Arunachalam who took over as SA to RM and without any blame, he served for fiv long years as Staff Officer to two Scientific Advisers, who are th pride of the country.

8.08. Thus, the forceful pleading of the petitioner is that he ha put up long and colourful record of service, but ignoring all this, h was forced to retire from service for the reasons not known to him bu best known to very few. According to the petitioner, he was subjecte to injustice from the beginning.

8.09. It is stated that his promotion was denied in the year 199 and the reasons were not assigned ; his juniors are promoted, however the DRDO Promotion Board found him fit and promoted him to the rank o Colonel in the year 1994, a year after.

8.10. The petitioner suspects that somebody has damaged hi reputation when he was working as CVRDE, which was handling a hig profile and high cost Main Battle Tank - Arjun Project. The petitione states he had a very frank and truthful discussion with SA to RM in th early 1989 about the working of CVRDE and the Arjun Project Management wherein he expressed that the project is not properly an professionally managed and according to him, the truthful communicatio from him to the then SA to RM may be a reason for somebody to sack hi from service. However, the petitioner contends that adverse remarks i any have not been communicated to him either verbally or in writing b any authority at any stage of his career and while he was dischargin his duties as a sane and sincere officer the impugned notice is serve on him and it is a shocking news not only to him but to his family an to all those who are doing honest and hard work in the Department.

8.11. The petitioner has highlighted all the above contentions i his letter addressed to SA to RM & DG (R&D) on 09th March,1998, and hi second letter dated 08th July,1998, addressed to the same authority an his last letter addressed to the Hon'ble Defence Minister, Ministry o Defence, on 03rd October, 1998. In his affidavit, he has mentione some of those facts.

9.00. COUNTER :

9.01. On behalf of the respondents, a Senior Administrativ Officer-I, CVRDE, Defence Research & Development Organisation, Chennai has filed a counter affidavit, wherein the facts with regard to th service of the petitioner, his various appointments and the order o compulsory retirement with effect from 31.10.1998 are admitted.

9.02. In para 6 of the counter, it is stated that the case of th

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petitioner was reviewed amongst others for continuance in servic beyond 52 years by the Selection Board strictly in terms of the Offic Memo of the Ministry of Defence vide No.Pers/1880/RD Sel Bd/7971/ (R&D), dated 23.11.1979, hereinafter referred to as memorandum, and th Board, after verifying the confidential reports pertaining to th petitioner, recommended that the petitioner was not to be continue inservice beyond 31st October,1998, and, accordingly, the impugne order of compulsory retirement has been issued.

9.03. The counter is totally silent about any adverse reports o remarks found in the confidential reports or the reasons of the Boar for not recommending the case of the petitioner. The thrust of th respondents through their counter is that as the Selection Boar recommended for compulsory retirement of the petitioner and it decision is final, the order in question has been issued.

10.00. ARGUMENTS :

10.01. Heard Sri Prakash Goklaney, learned counsel for th petitioner, and Sri C.Krishnan, learned Senior Counsel for th respondents.

10.02. Learned counsel for the petitioner highlighted th meritorious service rendered by the petitioner and contended that th order of compulsory retirement is whimsical, arbitrary and illegal. I is stated that the order does not state any reason for warrantin compulsory retirement of the petitioner at the age of 52 years depriving the future service of the petitioner, and that the factor which are relevant for issuing the order have not been communicated t the petitioner either before passing the impugned order o subsequently, despite the petitioner addressing the authoritie concerned, seeking for justice.

10.03. It is stoutly argued that the impugned order itsel clarifies that no disciplinary/vigilance case is pending o contemplated against the petitioner and that itself is sufficient t quash the same. It is further contended that the authorities hav right to review the work of an officer, but when the record has bee absolutely good, there should be valid and cogent reason for compulsor retirement of the officer and that the impugned order is against th principles of natural justice, as no opportunity has been given to th petitioner before passing the order.

10.04. On the other hand, learned Senior Counsel for th respondents has contended that the petitioner's work was found to b unsatisfactory and having considered the latest service record, th Board has formed an opinion that premature retirement of the petitione is necessary in public interest and it is bona fide and the same canno be questioned.

10.05. It is also contended that the petitioner has not chosen t challenge the order at the earliest and the writ petition is a

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afterthought and hence the same is liable to be dismissed. It i further contended that the recommendation of the Selection Board i based on the record of service of the petitioner as per CR and th decisions of the DRDO Selection Board in 1994 and 1997 are separate an distinct and hence the decision of the Board is final and it is as pe the criteria laid down by the Selection Board at the time of review.

11.00. POINT :

11.01. The point for determination is, whether the order o premature retirement, served on the petitioner, is arbitrary ?

11.02. I would now examine the relevant rule.

11.03. Para 7 of the Office Memorandum No.Pers/18601/RD Se Bd/7971/D (R&D), dated 23.11.1979, deals with Age of Compulsor Retirement, which is reproduced hereunder for a better understanding :

> "7. The age of compulsory retirement will be 57 years for all officers up to the rank of Maj Gen/Eqvt with reviews at 52 and 55 years to determine the suitability of an officer for continuation beyond that age. Officers considered not suitable for continuation in service, as a result of any of these reviews, will be retired on attaining the age of 52 years or 55 years, as the case may be. The review will be carried out by the DRDO Selection Board well in advance of the officers attaining the age of 52 and 55 years and criteria for the review will be laid down by the Selection Board. The officers also will have the reciprocal right to seek voluntary retirement on attaining the age of 52/55 years."

11.04. The above rule clarifies that the age of compulsor retirement is 57 years with reviews at 52 and 55 years to determine th suitability of an officer for continuance beyond that age. Thus, it i clear that a review is permissible at the age of 52 and 55 years an the said review is for the purpose of deciding as to whether th continuation of service of an officer is desirable or not. The rul further says that the officers considered not suitable for continuatio in service, as a result of any of those reviews, will be retired o attaining the respective age, as the case may be. It further says tha reviews will be carried out by the DRDO Selection Board well in advanc and the criteria for the review will be laid down by the Selectio Board. Therefore, the rule does now law down any criteria o guidelines for exercise of the review.

11.05. In Brij Mohan Singh Chopra v. State of Punjab // 1987 (2 SUPREME COURT CASES 188 //, in para 5, it is specifically held " ... The public interest in relation to public administration envisage retention of honest and efficient employees in service and dispensin with the services of those who are inefficient, deadwood or corrupt an dishonest. Therefore the rule contemplates premature retirement of th

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inefficient, corrupt or deadwood which would subserve the publi interest."

11.06. The purpose and object of premature and compulsor retirement of Government employees is to weed out the inefficient corrupt and dishonest officials. This right of the authority of th Government is well established, which is generally exercised i accordance with the relevant service rules. The scope and ambit o exercise of this absolute power depends on the provisions of rules an it is always subject to constitutional limitations. There can be n two opinions about this. The two judgments of the Apex Court referre to supra in this order clarify this point.

11.07. Since the rule in para 7 of the memorandum does not contai any criteria or guidelines for exercise of power of prematur retirement while reviewing the service of a particular individual, th appropriate authority, namely, the DRDO Selection Board in this case i expected to exercise its power in judicious manner to retire th petitioner in advance by formulating its opinion through the scrutin of the confidential reports and by taking into consideration any othe substantial material, which is placed before it, and is expected t furnish the reasons for such vital decision.

11.08. It may not be feasible to lay down any absolute terms bu there should be some record, disclosing adverse entries in the servic record about the inefficiency or lack of integrity on the part of th employee, which would justify the Board for premature retirement.

11.09. The service record, as a whole, of the employee woul determine the merit of each case.

11.10. The stray entry here and there or any adverse entry withou substantiating the same or any adverse entry without proof of clear an cogent supportive document should be ignored and discouraged. Further such an adverse entry should be communicated to the employe immediately so that the employee will have an opportunity o explanation and to seek for expunging the same, if the said advers entry is not based on any record. The communication of the advers entry to the employee concerned is highly essential, as the remotenes of an adverse entry for scrutiny of the service record of the employe concerned such as crossing of efficiency/confirmation and promotion t higher post or any other questionable conduct of the employee woul have a relevant importance.

11.11. Therefore, it is necessary to emphasise that th appropriate authority in the instant case, namely, DRDO Selection Boar should consider the premature retirement of any person if it has reasonable cause to believe that a particular individual is lackin integrity irrespective of the assessment of his ability and efficienc in work and while concluding this, the Board is expected to verify th meritorious service rendered by the employee if any and the advers

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entry made thereafter or earlier to it, if any.

11.12. Thus, while exercising the power, the Board should conside the merit of each case, but not a stray or single incident or an entry describing the employee concerned as a person of inefficiency, whic would not be justified for premature retirement. Therefore, only afte verifying the entire service of the employee strictly and as per th service record, a decision for premature retirement should b considered and premature retirement of an employee with doubtfu integrity is always advisable, as it would be in public interest. I the absence of any such doubtful integrity or any other details b which the question of public interest could be determined, any order c premature retirement is bad not only in the eye of law but for th betterment of the society.

MERITS OF THE CASE :

11.13. In the counter affidavit filed by the respondents, nothin has been stated about the doubtful integrity of the petitioner. I fact, the impugned order itself clarifies that there is no disciplinar or vigilance case pending or contemplated against the officer Therefore, the respondents are certifying that the petitioner is a officer with integrity and industry. The counter affidavit is als silent with regard to the inefficiency of the petitioner. It appear that the overall service record of the petitioner is ignored. When th petitioner has highlighted his meritorious service, as disclosed fro his service record, the duty cast on the respondents is to deny th same, if it is false. Non-denial of these facts establishes that th contents highlighted by the petitioner are true and if they are true the order of compulsory retirement is uncalled for and unethical.

11.14. The respondents have not produced any documents before thi Court to support their action. The impugned order and the subsequen communications from the respondent do not disclose the reasons fo arriving at a decision of premature retirement. The impugned order i silent about the documents referred to or the entries noted for th decision to make the petitioner retire at the age of 52 years Therefore, it is clear that the impugned order is issued withou considering the relevant records.

11.15. Para 2 of the impugned order discloses that the competen authority has not recommended continuance of the officer in service an it is after reviewing the service of the officer as per the memorandu referred to supra.

11.16. The reasons are not assigned for issuing the impugne order.

11.17. Lord Denning, in Breen v. Amalgamated Engineering Union / (1971 (1) All England Reports 1148 //, observed as follows :

> "It is now well settled that a statutory body, which is entrusted by statute with a discretion,

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must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand, or as administrative on the other hand, or what you will. Still it must act fairly. It must, in a proper case, give a party a chance to be heard : see In re H.K.(An Infant) [1967] 2 Q.B.617, 630 by Lord Parker C.J.in relation to immigration officers; and Reg. v. Gaming Board jor Great Britain, Ex parte Benaim and Khaida [1970] 2 Q.B.417,430 by us in relation to the gaming board. The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this : the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by Padfield v. Minister of Agriculture, Fisheries and Food [1968) A.C.997 which is a landmark in modern administrative law."

"... a body, statutory or domestic to give reasons for its decision or to give the person concerned a chance of being heard ? Not always, but sometimes. It all depends on what is fair in the circumstances. If a man seeks a privilege to which he has no particular claim - such as an appointment to some post or other - then he can be turned away without a word. He need not be heard. No explanation need be given : see the cases cited in Schmidt v. Secretary of State for Home Affairs [1969] 2 Ch.149, 170-171. But if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. The giving of reasons is one of the fundamentals of good administration. Again take Padfield's case [1968] A.C.997. The dairy farmers had no right to have their complaint referred to a committee of investigation, but they had a legitimate expectation that it would be. The House made it clear that if the Minister rejected their request without reason, the court might infer

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that he had no good reason; and, that if he gave a bad reason, it might vitiate his decision."

11.18. Giving reasons is one of the fundamentals of goo administration. Failure to give reasons amounts to denial of justice Reasons are live links between the mind of decision taker on th controversy and the man at the receiving end. Reasons substitut subjectivity by objectivity. Right to reason is an indispensable par of sound judicial or administrative system. Even if it is a militar system, the reasons are vital, because we are in democracy and th ballot is more powerful than bullet. In a democracy, dissent i inevitable. But, be you never so high the law is above you is th concept of rule of law and all of us are below the law. An unreasone order is not an order in the eye of law. Silence renders virtuall impossible for the victim as well as the Courts to perform thei duties. It is based on the principle that the affected party shoul know why the decision has gone against him. One of the salutar requirements of natural justice is spelling out reasons for the orde made, in other words- speaking out. Thus, it is clear that unreasone order amounts to non-speaking order. A non-speaking order is to b quashed. The respondents cannot canvas that it is their privilege.

11.19. When the right information is the order of the day and whe this right is treated as a natural right of humanity from the time o birth till death and such right of information is recognised as huma right from the time immemorial not only in Kaliyuga or through th latest legislation but from the birth of Adam and Eve and when we ar advocating is as a human right and a fundamental right, the authoritie cannot contend that it is their privilege.

11.20. In fact, the integrity and sovereignty of the country i mainly on the shoulders of self disciplined citizen, who is recognise as honest, hardworking and intelligent, but not on the whimsica functions of the authority, enjoying the star comforts and ruining th State and society under the guise of ruling.

11.21. Dismissal from service, removal from service and compulsor retirement from service of an honest employee is the capital punishmen under the service law, as it affects the reputation and livelihood o the employee as well as the entire family. The real victims of thi episode are the dependants of the employee and it is a stigma on th future of the family. The black stain is unbearable. The future i bleak to the entire family and it causes great hardship to them to mov in the society.

11.22. Discipline, which is very much essential in every walk o human life, must be observed in the family, in the office and in th society and the discipline makes a man with perfection and lack o discipline will ruin the nation. Once upon a time, the society used t believe that those who are in uniform are disciplines, but, of late, i is realised that it is only myth and the reality appears to be that i

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is worst in maintaining equality and equal justice and if so can w call it as discipline. Those who are at the helm of affairs have t rectify the discipline in service areas. He, who speaks abou discipline and points fingers at others on the ground of indiscipline must stand as an example before taking action against others. Actin beyond one's authority is itself breach of discipline and it amounts t misconduct. The authority, whether it consists of a member of th Selection Board or sitting in comfortable cushion seats at high place and flying high should be disciplined persons, before speak out o discipline. This Court prefers death than to lead indiscipline life.

11.23. In the instant case, it is noticed that there is som indiscipline at some level with the respondents. Therefore, this orde is directed to be communicated to the Cabinet Secretary of the country to enquire into and initiate necessary action to eradicate indisciplin however so big or so high it has engineered, thereby making the honest hardworking and efficient employees however so low or so small at th field level, who are donating sweat and blood for the cause of th society and the safety of the country. It is for the Cabine Secretary, if necessary, to place the necessary files before the hea of the State, the Chief Commander of the Armed Forces of the country our most respectful first citizen, and also before the head of th Government, so that the two eminent personalities holding high office of our land may take some measures to eradicate the evil. A copy o this order is directed to be marked to the Principal Secretary of Hi Excellency The President of India and the Prime Minister's Office. Th endeavour of this Court is to protect justice and prevent injustice If the order of this Court is wrong, there is an appellate Court t rectify, but when the order of the Selection Board was patently wron on the fact of the record, it was not rectified and hence th intervention of this Court is sought for.

11.24. In the instant case, the petitioner contends that he is very good officer, at least he is an officer of above average, and th heads of his section have rated him as a good officer, while recordin the annual confidential reports, and he has earned worthy entries i the service record, which are commendable in nature.

11.25. It is significant to note that the respondents have no denied the above facts. In fact, the integrity of the petitioner is no doubted even through the impugned order. There are no adverse entrie either mentioned in the impugned order or communicated to th petitioner or placed before this Court.

11.26. The petitioner has asserted that in all his earlie representations, he has an unblemished record. His representations hav not been properly considered by the appropriate authority. A unreasoned reply has been issued. The fact remains that the petitione had sent representations against the impugned order and the reply t the representations clearly discloses that the representations are no properly considered. The entries in the service record are not verifie

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and that the same old stand has been reaffirmed. Making representation is a valuable right and if representation is no considered properly, it will affect the career of a permanent servant.

11.27. The Apex Court, in Brij Mohan Singh Chopra v. State o Punjab, referred to above, in para 11, observed as follows :

> "11.Though the entire service record of an employee may be considered while considering the question of his premature retirement, but if the service record of the last 10 years of his service does not indicate any deficiency in his work and conduct, it would be unjust and unreasonable to retire him prematurely on the basis of entries which may have been awarded to him prior to that period....."

11.28. In the instant case, this Court is of the opinion that th petitioner has earned good reputation during his service and therefore, the decision to retire him prematurely is not sustainable i law.

12.00. RESULT :

12.01. Accordingly, this Court allows this Writ Petition, settin aside the impugned order, and the petitioner shall be treated as bein in service without any break. However, the petitioner is permitted t receive 25% of his salary, allowances and such other benefits as may b admissible to him under the rules, as he is not entitled for ful salary on the principle "No work, No pay". The respondents ar directed to issue necessary orders within two weeks from the date o receipt of copy of this order. The respondents shall pay the costs o this Writ Petition to the petitioner and the costs are awarded a Rs.10,000/-. The Union of India is to recover the costs as well as th expenditure of this litigation from the personal account of th respective erring officials, responsible for this unhealthy litigatio and making the mighty Union of India to stand before the Court for it no fault.

With the result, this Writ Petition is allowed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary to Government,
Unionof India,
Department of Defence (R&D),
New Delhi.

2.The Director General - Research & Development,
Ministry of Defence,
New Delhi.

3.The Director of Personnel,
R&D Organisation,
Ministry of Defence,
New Delhi.

4.The Estate Manager,
Estate Management Establishment,
Secunderabad.

5.The Cabinet Secretary,
Union of India,
New Delhi.

6.The Principal Secretary to His Excellency,
The President of India,
New Delhi.

7.The Secretary to Prime Minister's Office,
New Delhi.

ONE CC TO MR.C.KRISHNA SCCG SR 61008

2 CCS TO MR.PRAKASH GOKLANEY, ADVOCATE SR 61148

W.P.No.16723 OF 1998

08-12-2006

TEJ(CO)

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